

ASSEMBLY BILL

No. 2421

Introduced by Assembly Member Huff

February 21, 2008

An act to add Chapter 5 (commencing with Section 1705) to Part 6 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2421, as introduced, Huff. Employment of unauthorized aliens.

Federal law prohibits the employment of an individual who, if an alien, is neither an alien lawfully admitted for permanent residence in the United States nor an alien otherwise authorized under federal law or by the federal Attorney General to be employed in the United States. Federal law establishes E-Verify as a free, online tool for participating employers to verify the employment eligibility of new employees and provides other methods for verifying the employment eligibility of new employees.

This bill would require the state Attorney General, county counsel, or district attorney of a county in which the board of supervisors has not appointed a county counsel, to investigate a complaint alleging that an employer has intentionally employed an unauthorized alien. If the complaint is determined to not be false, then the state Attorney General or the county counsel or district attorney of a county, as applicable, would be required to notify specified local and federal entities of the unauthorized alien. The bill also would establish as a misdemeanor the intentional filing of a false complaint that alleges an employer has intentionally employed an unauthorized alien.

The bill would require the county counsel or district attorney of a county, as applicable, to bring an action in superior court for the

violation if it occurred on or after January 1, 2009, and the court would be required to expedite the action. An employer who the court finds to have intentionally employed an unauthorized alien would temporarily or permanently lose specified business licenses relating to the business location at which the unauthorized alien performed work based on whether it is the first, 2nd, or 3rd offense of the employer and evidence and information related to the offense.

The bill would require the state Attorney General to maintain copies of court orders related to the intentional employment of unauthorized aliens, and to maintain a database of employers with one offense and make the corresponding court orders available on the Internet Web site of the state Attorney General.

The bill would provide an employer with a rebuttable presumption that he, she, or it did not violate the prohibition on the intentional employment of an unauthorized alien if he, she, or it provides proof of verification of the employment eligibility of the employee through E-Verify. An employer would establish an affirmative defense to the violation of the prohibition by demonstrating compliance with another federal provision regarding employment eligibility verification. Beginning January 1, 2009, an employer would be required to use E-Verify to verify the employment eligibility of an employee.

By creating a new crime and by requiring local government officials to assume new responsibilities, this bill would impose state-mandated local programs.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 5 (commencing with Section 1705) is
- 2 added to Part 6 of Division 2 of the Labor Code, to read:

1 CHAPTER 5. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED
2 ALIENS
3

4 1705. For purposes of this chapter, the following terms have
5 the following meanings:

6 (a) "Agency" means a board, bureau, commission, department,
7 division, office, or other agency, or a subdivision thereof, of this
8 state or of a county, city, or district of any kind, or another public
9 entity in this state, including a charter city or county, which issues
10 licenses for purposes of operating a business in this state.

11 (b) "Employee" means a person who renders service in a
12 business of an employer for wages or pay.

13 (c) "Employer" means a person who transacts business in this
14 state pursuant to a license issued by an agency and who employs
15 one or more persons in this state.

16 (d) "E-Verify" means the employment eligibility verification
17 program, formerly known as the basic pilot program, which is
18 jointly administered by the United States Department of Homeland
19 Security and the United States Social Security Administration and
20 established pursuant to Section 401 and subsection (a) of Section
21 403 of the Illegal Immigration Reform and Immigrant
22 Responsibility Act of 1996 (Division C of P.L. 104-208), as
23 amended, or its successor program.

24 (e) "License" means a license, certificate, registration, or other
25 means to engage in a business or profession in this state that is
26 issued by an agency. However, "license" does not include a license
27 that is required to practice a particular profession, which is required
28 in addition to a business license necessary to operate a business
29 providing the products or services that are the subject of that
30 professional license.

31 (f) "Person" has the same meaning as in Section 18.

32 (g) "Unauthorized alien" means an alien who does not have the
33 legal right or authorization under federal law to work in the United
34 States as described in paragraph (3) of subsection (h) of Section
35 1324a of Title 8 of the United States Code.

36 1706. An employer shall not intentionally employ an
37 unauthorized alien.

38 1707. (a) (1) On receipt of a complaint that an employer has
39 intentionally employed an unauthorized alien, the Attorney
40 General, county counsel, or district attorney of a county in which

1 the board of supervisors has not appointed a county counsel, whose
2 office receives the complaint shall investigate whether the employer
3 has violated Section 1706. When investigating a complaint, the
4 Attorney General, district attorney, or county counsel shall not
5 attempt to independently determine whether an alien is authorized
6 to work in the United States, but rather shall verify the immigration
7 status or work authorization of the allegedly unauthorized alien
8 with the federal government pursuant to subsection (c) of Section
9 1373 of Title 8 of the United States Code.

10 (2) A person who intentionally files a false complaint under this
11 subdivision is guilty of a misdemeanor.

12 (b) If, after an investigation, the Attorney General or district
13 attorney of a county or the county counsel, as applicable,
14 determines that the complaint is not false, he or she shall do the
15 following:

16 (1) Notify the Immigration and Customs Enforcement branch
17 of the Department of Homeland Security of the unauthorized alien.

18 (2) Notify the appropriate local law enforcement agency of the
19 unauthorized alien.

20 (3) If he or she is the Attorney General, notify the appropriate
21 district attorney of a county or the county counsel, as applicable,
22 of the outcome of the investigation and of the action required to
23 be taken pursuant to Section 1708.

24 1708. The county counsel or district attorney of a county, as
25 applicable, shall bring a civil action for a violation of Section 1706
26 against the employer in the superior court of the county where the
27 unauthorized alien is employed. However, the county counsel or
28 district attorney shall not bring an action against an employer for
29 a violation of Section 1706 that occurs before January 1, 2009. A
30 second or third violation of this section shall be based only on an
31 unauthorized alien who is employed by the employer after the first
32 or first and second, as appropriate, action has been brought for a
33 violation of Section 1706.

34 1709. (a) A court shall expedite an action brought under this
35 chapter.

36 (b) When determining whether an employee is an unauthorized
37 alien, the court shall consider the determination of the federal
38 government pursuant to subsection (c) of Section 1373 of Title 8
39 of the United States Code that is obtained pursuant to subdivision
40 (a) of Section 1707. A determination of the federal government

1 that the employee is eligible for employment creates a rebuttable
2 presumption of the lawful status of the employee. The court may
3 take judicial notice of the determination of the federal government
4 and may request the federal government to provide automated or
5 testimonial verification pursuant to subsection (c) of Section 1373
6 of Title 8 of the United States Code.

7 1710. If the court finds an employer has violated Section 1706,
8 the court shall take the following action:

9 (a) For a first violation during a five-year period:

10 (1) Order the employer to terminate the employment of all
11 unauthorized aliens.

12 (2) Order the employer to be subject to a five-year probationary
13 period. During the probationary period, the employer shall file
14 quarterly reports with the county counsel or district attorney of the
15 county, as applicable, for each new employee who is hired by the
16 employer at the location where the unauthorized alien performed
17 work.

18 (3) Order the appropriate agencies to suspend all licenses
19 described in paragraph (4) that are held by the employer for a
20 minimum of 10 days. The court shall base its decision on the length
21 of the suspension under this paragraph on any evidence or
22 information submitted to it during the action for a violation of
23 Section 1706 and shall consider the following factors, if relevant:

24 (A) The number of unauthorized aliens employed by the
25 employer.

26 (B) Prior misconduct by the employer.

27 (C) The degree of harm resulting from the violation.

28 (D) Whether the employer made good faith efforts to comply
29 with the investigation conducted pursuant to Section 1707.

30 (E) The duration of the violation.

31 (F) The role of the directors, officers, or principals of the
32 employer in the violation.

33 (G) Any other factors the court deems appropriate.

34 (4) Order the employer to file a signed sworn affidavit with the
35 county counsel or district attorney of a county, as applicable. The
36 affidavit shall state that the employer has terminated the
37 employment of all unauthorized aliens and that the employer will
38 not intentionally or knowingly employ an unauthorized alien. All
39 licenses that are suspended under this subdivision shall remain
40 suspended until the employer files a signed sworn affidavit with

1 the county attorney. On receipt of the order of the court and
2 notwithstanding any other law, the appropriate agencies shall
3 suspend the licenses according to the order of the court. The court
4 shall send a copy of its order to the Attorney General.

5 (5) The licenses that are subject to suspension under this
6 subdivision are all licenses that are held by the employer and that
7 are necessary to operate the business of the employer at the
8 business location where the unauthorized alien performed work.
9 If a license is not necessary to operate the business of the employer
10 at the specific location where the unauthorized alien performed
11 work, but a license is necessary to operate the business of the
12 employer in general, the licenses that are subject to suspension
13 under this subdivision are all licenses that are held by the employer
14 at the primary place of business of the employer, but a suspension
15 of any of these general business licenses shall apply only to the
16 operation of the business of the employer at the business location
17 where the unauthorized alien performed work.

18 (b) For a second intentional violation of Section 1706 during
19 the period of probation, order the appropriate agencies to suspend
20 for six months all licenses that are held by the employer and that
21 are necessary to operate the business of the employer at the
22 business location where the unauthorized alien performed work.
23 If a license is not necessary to operate the business of the employer
24 at the specific location where the unauthorized alien performed
25 work, but a license is necessary to operate the business of the
26 employer in general, the court shall order the appropriate agencies
27 to suspend for six months all licenses that are held by the employer
28 at the primary place of business of the employer, but a suspension
29 of any of these general business licenses shall apply only to the
30 operation of the business of the employer at the business location
31 where the unauthorized alien performed work. On receipt of the
32 order and notwithstanding any other law, the appropriate agencies
33 shall immediately suspend the licenses.

34 (c) For a third intentional violation of Section 1706 during the
35 period of probation, order the appropriate agencies to permanently
36 revoke all licenses that are held by the employer and that are
37 necessary to operate the business of the employer at the business
38 location where the unauthorized alien performed work. If a license
39 is not necessary to operate the business of the employer at the
40 specific location where the unauthorized alien performed work,

1 but a license is necessary to operate the business of the employer
2 in general, the court shall order the appropriate agencies to
3 permanently revoke all licenses that are held by the employer at
4 the primary place of business of the employer, but a suspension
5 of any of these general business licenses shall apply only to the
6 operation of the business of the employer at the business location
7 where the unauthorized alien performed work. On receipt of the
8 order and notwithstanding any other law, the appropriate agencies
9 shall immediately revoke the licenses.

10 1711. The Attorney General shall maintain copies of court
11 orders that are received pursuant to Section 1710, and shall
12 maintain a database of the employers who have a first violation of
13 Section 1706 and make the corresponding court orders available
14 on the Internet Web site of the Attorney General.

15 1712. For purposes of this chapter, proof of verification of the
16 employment authorization of an employee through E-Verify creates
17 a rebuttable presumption that an employer did not intentionally
18 employ an unauthorized alien.

19 1713. For purposes of this chapter, an employer who establishes
20 compliance in good faith with the requirements subsection (b) of
21 Section 1324a of Title 8 of the United States Code establishes an
22 affirmative defense that he, she, or it did not intentionally employ
23 an unauthorized alien.

24 1714. Beginning January 1, 2009, an employer, after hiring an
25 employee, shall verify the employment eligibility of the employee
26 through E-Verify.

27 1715. This chapter shall be implemented only to the extent not
28 prohibited by federal law.

29 SEC. 2. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution for certain
31 costs that may be incurred by a local agency or school district
32 because, in that regard, this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty for a crime
34 or infraction, within the meaning of Section 17556 of the
35 Government Code, or changes the definition of a crime within the
36 meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 However, if the Commission on State Mandates determines that
39 this act contains other costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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